

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 26**

**BRISTOL HOTEL MANAGEMENT CORP.
d/b/a WHISPERING WOODS HOTEL AND
CONFERENCE CENTER**

Employer

and

Case 26-RC-8241

**UNITED FOOD & COMMERCIAL
WORKERS UNION, LOCAL 1529,
AFL-CIO-CLC**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds: /1

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. /2
3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: /3

INCLUDED: All full time and part-time housekeeping, laundry, parlor, kitchen, pantry, dining room, banquet, front-desk employees, sales and reservation employees, van drivers, maintenance employees and golf course employees

EXCLUDED: All other employees, including pro shop employees, general office and administrative employees, office clerical employees, temporary and casual employees, captains, managers, guards, and supervisors, as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to

be represented for collective bargaining purposes by the United Food & Commercial Workers Union, Local 1529, AFL-CIO-CLC. /4

LIST OF VOTERS

To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U. S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days of the date of this Decision. The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the Memphis Regional Office (Region 26), 1407 Union Avenue, Suite 800, Memphis, TN 38104, on or **before March 8, 2001**.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a Request for Review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **March 15, 2001**.

DATED March 1, 2001, at Memphis, Tennessee.

/s/

Ronald K. Hooks, Director Region 26
National Labor Relations Board
1407 Union Avenue, Suite 800
Memphis, TN 38104-3627
tel: 901-544-0018

1. The Employer and Petitioner have each filed briefs which have been duly considered.
2. The parties stipulated that Bristol Hotel Management Corp. d/b/a Whispering Woods Hotel and Conference Center is a Delaware corporation with a place of business in Olive Branch, Mississippi. During the past twelve (12) months, a representative period, the Employer derived gross revenues in excess of \$500,000 and purchased and received goods valued in excess of \$50,000 directly from points outside the state of Mississippi.
3. The Employer is engaged in the operation of a hotel, conference center and golf course located at 11200 East Goodman Road in Olive Branch, Mississippi. The General Manager of the facility is Steven Falciani. Reporting to Falciani are John Hirt, Hotel Manager; Marty Fulton, Director of Golf; Laura Watson Roche, Director of Catering and Sue Shaer, Director of Sales.

The Petitioner seeks to represent all full-time and regular part-time housekeeping, laundry, parlor, kitchen, pantry, dining room, banquet and front desk employees. The Petitioner would exclude the golf course employees and the reservation/sales agent as lacking a sufficient community of interest. Additionally, it argues that the inspectors should be excluded as supervisors. The Employer denies that the inspectors are supervisors and would include all of the disputed employees in the unit because, it argues, they share a sufficient community of interest.

All petitioned-for employees fall in departments headed by Hirt. The Director of Human Resources, Susan Lewis, and Controller, Gena Ingram, also report to Hirt but employees in those departments are not requested in the petition. The departments under Hirt, which are the subject of the petition, are Housekeeping with Sharon Kitson as the director, Front Office with Jonette Howard as the manager, and Food and Beverage Division with Emmanuel Tom as the manager. Housekeeping is responsible for the cleanliness of all the public areas and rooms within the

hotel. This department includes two (2) housekeeping inspectors, nine (9) housekeepers, four (4) laundry attendants and three (3) housemen.

The Front Desk includes the Front Desk Supervisor, Keith Palmer, two (2) van drivers, one (1) reservation agent, two (2) night auditors and seven (7) front desk agents.

The Food and Beverage Division, includes banquet, which contains banquet servers and banquet housemen, and has nine (9) employees, dining room, which has ten (10) employees who work as servers, cashiers and a bartender, and the kitchen which has cooks, pantry employees and stewards for a total of twelve (12) employees.

The Golf Department is separate from Hotel Management and is headed by Director of Golf, Marty Fulton. Reporting to Fulton are Sam Jepsen, Head Golf Professional; Raymond Anthony, Golf Course Superintendent; Russell Clark, Assistant Golf Superintendent; John Muizer, Golf Professional and John Martin, Golf Professional.

The parties stipulated that Steve Falciani, General Manager; John Hirt, Hotel Manager; Sharon Kitson, Director of Housekeeping; Emmanuel Tom, Food and Beverage Director; Laura Roche, Director of Catering; Sue Skaer, Director of Sales; Susan Lewis, Director of Human Resources; Marty Fulton, Director of Golf; David Taricani, Chief Engineer; Jonette Howard, Front Office Manager; Bruce Foley, Executive Chef; Sam Jepsen, Head Golf Professional; Sam Buchanan, Asst. Banquet Manager; Gena Ingram, Controller; Raymond Anthony, Golf Course Superintendent; Russell Clark, Asst. Golf Superintendent; Olie Bowens, Restaurant Manager; Keith Palmer, Front Desk Supervisor; John Muizer, Golf Professional; and John Martin, Golf Professional have the authority to fire, transfer, suspend, lay-off, or call, promote, assign, reward or discipline employees, or responsibly direct them or to adjust their grievances, or to effectively recommend such action and are supervisors within the meaning of Section 2(11) of the Act. The

Golf Department also includes groundskeepers, cart attendant, and a mechanic. There are approximately 12 employees within the Golf Department.

GOLF COURSE EMPLOYEES

The Golf department consists of approximately eight (8) groundskeepers, two (2) cart attendants and one (1) mechanic. The cart attendants pull up golf carts for guests, assist guests in loading the carts, put the carts away, and wash them. The cart attendants also clean the rental clubs and handle the trash in their area. The cart attendants are paid \$5.50 per hour plus tips. The mechanic maintains the lawnmowers and other golf equipment. The mechanic is paid \$13.78 an hour. The groundskeepers maintain the greens, bunkers, trees, fairways and Tee-boxes on the golf course. The groundskeepers also assist in other areas of the hotel as needed and are paid approximately \$7 an hour. In addition to the groundskeepers in the Golf department, there is Joe Ed Kirk, a groundskeeper who, for accounting purposes, is classified as being in the Engineering department, but he reports to Clark in the Golf department. Kirk's primary responsibility is to maintain the hotel grounds but he also assists in mowing the golf course. The Employer presented exhibits, which reflect that Kirk is supervised by Anthony and Clark, supervisors in the Golf department. Kirk is paid \$7.72 per hour.

Golf employees, as well as Kirk, share the same benefits package, 401k plan, day care subsidy and bonus plan as other employees within the stipulated unit. Golf employees may bid on positions within the Employer's other departments if they wish. Also, when the weather does not allow for the use of the golf course, such as on rainy days or during the colder months, golf employees can and have worked within the Banquet or Housekeeping departments of the Employer. There have been no permanent transfers between Golf and other departments. However, golf employees can be temporarily transferred to other departments, usually

housekeeping and food and beverage, when they are needed. The record reflects that such temporary transfers occur at least twice a month. The record reflects that the skills required to perform the positions in the petitioned for unit are easily learned and no prior experience is required for filling those positions. The record also reflects that when these transfers occur the golf employee is either paid his or her regular rate or that of the department for which the work is being performed, whichever is higher. In addition, Food and Beverage employees may use a golf cart in order to provide refreshments to clients on the golf course. The record shows that golf employees work similar hours to unit employees. The kitchen staff and golf employees begin their workday at 5:30 a.m. and end at 2:00 p.m. Housekeeping keeps similar hours beginning at 6:00 a.m. Golf employees also use the same breakrooms and banquet facilities to eat as other employees.

In determining an appropriate unit, the Board applies a community of interest analysis, wherein a number of factors are considered, including the similarity of duties, job qualifications, wages, benefits, and working conditions, extent of interaction and interchange, organizational structure, functional integration of the business, history of collective bargaining and the scope of the petitioned-for unit. *Kalamazoo Paper Box Corp.*, 136 NLRB 134 (1962).

The record reflects that all the employees punch a time clock and are paid an hourly wage. The golf employees receive the same benefits as those within the bargaining unit. The record also reflects that there is more than incidental interaction and interchange between the golf employees and other unit employees evidenced by the temporary transfers between departments as frequently as twice a month and the use of golf employees during rainy periods and colder months in the housekeeping and banquet departments. In light of the foregoing, I find that the golf employees share a community of interest with other unit employees and will include

them in the unit. *Atlanta Hilton*, 273 NLRB 87 (1984); *Ramada Inns*, 278 NLRB 691 (1986). Since Kirk works in close proximity with the golf employees performing similar duties, I will also include him in the unit.

INSPECTORS

Within the Housekeeping Department there are two (2) Housekeeping inspectors, Hurtistine Banks and Mary Brown. The inspectors follow the housekeepers, who clean the rooms, and inspect the guest's rooms for cleanliness and maintenance issues. Banks and Brown then report their findings to Sharon Kitson, Director of Housekeeping. Inspections are performed with the aid of a form, which lists the expectations of cleanliness and placement in the rooms. Using these forms, the Inspectors track any deficiencies in a room. Any such deficiencies are calculated and given a numerical code. These forms are then given to Kitson to be used by her to evaluate the performance of the housekeeper, which can determine whether or not the employee gets a raise or is subject to discipline or termination. The Inspectors spend 70 percent of their time inspecting rooms and 30 percent performing cleaning duties. When Brown and Banks clean rooms, Kitson inspects their work. Brown and Banks have on occasion been referred to as supervisors. The Petitioner submitted exhibits in which Banks identifies herself as a housekeeping supervisor. Brown and Banks earn approximately \$8.50 per hour, and other housekeeping employees earn between \$6.30 and \$7.50 per hour.

The record reflects that Brown and Banks lack the authority to hire, fire, lay-off, recall, promote, transfer, suspend or authorize leave. Likewise, they lack the authority to assign work, issue rewards or discipline employees unless instructed to do so by Kitson. The record also reflects that when a problem is reported to Kitson by an inspector, she conducts her own investigation into the matter. Thus, such reports by the inspectors cannot be characterized as

“effective recommendations” within the meaning of Section 2(11) of the Act. While they possess the ability to recommend employees for hire, a similar ability is possessed by all of the employees within the housekeeping department. The evidence reflects that the recommendations of inspectors are given no more weight than those of other employees. Kitson creates the inspectors schedules based on hotel occupancy. Banks and Brown punch in at a time clock like other housekeeping employees and have their time signed off by Kitson, in the same manner as other Housekeeping employees.

When Kitson is not available, Banks and Brown report any concerns to Hirt or contact Kitson at home to receive direction. In Kitson’s absence, either Banks or Brown attend NETMA (Nobody Ever Tells Me Anything) meetings in her place. NETMA meetings are held daily within departments between managers and employees to discuss the events for the day within that department, general hotel information and any other issues, which involve the department. The record is unclear as to whether unit employees attend these meetings, however, in any event, it does not appear that attendance or participation in such meetings reflects any supervisory authority.

Supervisory status under the Act depends on whether an individual possesses the authority to act in the interest of the employer in the matters and in the manner specified in Section 2(11) of the Act, which defines the term “supervisor” as:

“...any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgement.”

To meet this definition, a person must possess only one of the specific criteria listed, or the authority to effectively recommend, so long as the performance of that function is not routine, but requires the use of independent judgement. See *Ohio Power Co. v. NLRB*, 176 F. 2d 385 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949). See also *Queen Mary*, 317 NLRB 1303 (1995).

The party seeking to exclude an individual from voting for a collective bargaining representative has the burden of establishing that the individual is ineligible to vote. *Golden Fan Inn*, 281 NLRB 226, fn. 24 (1986). As stated in *The Ohio Masonic Home, Inc.*, 295 NLRB 390, 393 (1989) “in representation proceedings such as this, the burden of proving that an individual is a supervisor rests on the party alleging that supervisory status exists.” *Tucson Gas & Electric Co.*, 241 NLRB 181 (1979), *Dickinson-Iron Agency*, 283 NLRB 1029, 1034 (1987).

In its brief, the Petitioner cites *Waverly-Cedar Falls, Health Care, Inc.*, 297 NLRB 390 (1989) for the proposition that absent a finding that the inspectors are supervisors, the ratio of employees to supervisors would be greater than fifteen (15) to one (1), an impracticably high ratio. In *Waverly*, the Board found that if the LPN’s in that case were found to be supervisors then the ratio would be one (1) supervisor to four (4) employees, which could also arguably be unreasonable. Therefore in *Waverly*, the Board found the supervisor to employee ratio was not a dispositive factor in determining supervisory status.

In addition, the Petitioner points to the fact that the evaluations completed by the inspectors were not introduced into evidence by the Employer. Inspectors complete the forms when evaluating the work done in cleaning a room. The evaluation forms provide a system by which housekeepers receive a numeral score on their work. These forms are kept by Kitson during the year and are used in preparing employee performance evaluations, which can impact

whether an employee gets a raise or is terminated. There is no evidence that the preparation of these forms requires the use of independent judgement.

The Petitioner submitted evidence in the form of internal documents in which the inspectors were occasionally referred to as supervisors. The designation of an individual by title as a supervisor in a job description or other document is insufficient to confer supervisory status. *Western Union Telegraph Company*, 242 NLRB 825, 826 (1979). Representation of oneself or the impression one has of supervisory authority is not a primary indicia of supervisory status. However, it could be considered evidence of secondary indicia. Secondary indicia will be considered when the possession of powers associated with primary indicia can not be conclusively established. See *Flexi-Van Service Center*, 228 NLRB 956 (1977). In the instant case, the lack of primary indicia has been conclusively established. Therefore, I find that Banks and Brown are not supervisors within the meaning of Section 2(11) of the Act and they are included in the unit.

RESERVATION AGENT

Ginger Puckett is the reservation agent for the Employer. Puckett answers the telephone when individuals call requesting room reservations. Puckett then books the reservation for the customer. Puckett also gets rooming lists from the sales department for group reservations and inputs that information into the reservation terminal. She performs these duties at a reservation terminal located in a small office behind the Front Desk. Two (2) front desk agents also use the reservation terminal to input group and individual reservations. Puckett also works at the Front Desk, checking guests into the hotel. Puckett spends 35 percent of her time performing front desk duties and 65 percent working at the reservation terminal. Puckett reports to Howard, Front Office Manager, along with the van drivers, night auditors, and front desk agents. The record

reflects that Puckett and the other front desk employees are currently wearing causal clothing as uniforms because their new uniforms have not arrived. Puckett's uniform will be the same as the other employees' who work at the front desk. Puckett earns \$9 an hour and the front desk agents earn approximately \$7.50 an hour

During the hearing the Employer took the position that Puckett should be included in the unit. The Petitioner declined to clearly state a position as to why it would exclude Puckett from the unit, but sought to retain the right under the Act to challenge employees as they vote and determine their eligibility in a post-election hearing. The Board has held that notwithstanding the refusal of a party to take a position on an issue, the record must contain sufficient evidence to permit the Regional Director to resolve outstanding issues and determine the appropriateness of the unit. *Health Acquisition Corp., d/b/a Health Care Services*. 332 NLRB #134 Slip Op. pg. 2 (2000). Further, a party may not decline to litigate an issue during the hearing and thereafter attempt to re-litigate that issue in a challenged ballot proceeding. Such action "would amount to condoning duplicative procedures, unjustified delays, and unnecessary expenses for all parties, including the Board." *Bennett Industries, Inc.*, 313 NLRB 1363 (1994).

Puckett's workspace is located right behind the Front Desk where unit employees perform their tasks, and she performs work similar to and on occasion the same as that performed by other unit employees. Additionally, other unit employees periodically perform her work. She performs her duties under the same or similar terms and conditions of employment as other unit employees, and I find that she does possess a community of interest with other unit employees. *Oxford Chemicals*, 286 NLRB 187 (1987), *Anstead Center*, 326 NLRB 1208, 1209 (1998). The evidence contained in the record supports a finding that Puckett shares a community of interest with other unit employees. The Petitioner has offered nothing to the contrary.

Therefore, I find that Puckett is appropriately included in the petitioned for unit. Consistent with *Bennett Industries*, supra, the Petitioner will not be permitted to challenge the status of Puckett as an eligible voter.

There are approximately 91 employees in the unit found appropriate herein.

5. In accordance with Section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a Request for Review is filed, unless the Board expressly directs otherwise.

CLASSIFICATION INDEX

460-5067-4900

460-5067-9900

460-7550-8700